

In the Provincial Court of Alberta

Citation: R. v. Preece, 2013 ABPC 81

Date: 20130403
Docket: 100566215P1
Registry: Calgary

Between:

Her Majesty the Queen

- and -

Susan Lee Preece



Restriction on Publication: By Court Order, information that may identify the persons described in this judgment as the complainants: [REDACTED] may not be published, broadcast, or transmitted in any manner. There is also a ban on publishing the contents of the application for the publication ban or the evidence, information or submissions at the hearing of the application. See the *Criminal Code*, s. 486.4

Judgment of the Honourable Judge E. J. Creighton

[1] Susan Lee Preece is charged and pled not guilty to the following seven (7) counts:

Count 1: On or between the 1st day of January A.D. 2010 and the 31st day of March A.D. 2010, at or near the Town of Canmore in the Province of Alberta, did commit an assault on a child, [REDACTED] contrary to Section 266 of the *Criminal Code*.

Count 2: On or between the 1st day of January A.D. 2010 and the 31st day of March A.D. 2010, at or near the Town of Canmore in the Province of Alberta, did commit an assault on a child, [REDACTED] contrary to Section 266 of the *Criminal Code*.

Count 3: On or between the 1st day of January A.D. 2010 and the 31st day of March A.D. 2010, at or near the Town of Canmore in the Province of Alberta, did

commit an assault on a child, [REDACTED] contrary to Section 266 of the *Criminal Code*.

Count 4: On or between the 1st day of January A.D. 2010 and the 31st day of March A.D. 2010, at or near the Town of Canmore in the Province of Alberta, did commit an assault on a child, [REDACTED] contrary to Section 266 of the *Criminal Code*.

Count 5: On or between the 1st day of January A.D. 2010 and the 31st day of March A.D. 2010, at or near the Town of Canmore in the Province of Alberta, did commit an assault on a child, [REDACTED] contrary to Section 266 of the *Criminal Code*.

Count 6: On or between the 1st day of January A.D. 2010 and the 31st day of March A.D. 2010, at or near the Town of Canmore in the Province of Alberta, did commit an assault on a child, [REDACTED] contrary to Section 266 of the *Criminal Code*.

Count 7: On or between the 1st day of January A.D. 2010 and the 31st day of March A.D. 2010, at or near the Town of Canmore in the Province of Alberta, did commit an assault on a child, [REDACTED] contrary to Section 266 of the *Criminal Code*.

Agreed Statement of Facts

[2] An Agreed Statement of Facts was entered as Exhibit #1. It confirmed the alleged victims' (children's) names and dates of birth. It also contained an admission by the accused that she was part owner of the Daycare Centre (Dragonfly Day Care) and that she worked there during those dates it is being alleged the assaults took place.

Summary

[3] The accused owned and operated a daycare centre in Canmore known as Dragonfly Day Care. She was also the Director. The daycare centre was duly licensed by the Province of Alberta.

[4] It is alleged in Count #1 that the accused assaulted [REDACTED] by causing bruising to his neck - on each side of his neck¹ and also, by leaning 'over into the crib with a very quick motion, grabbed him around the arms, turned to the mat which was behind her, and slammed him down onto the mat'.²

¹ Transcript, March 21-22, 2011, p. 53, ll. 32-36 (Portlock)

² Transcript, March 21-22, 2011, p. 75, ll. 8-9 (Bramble)

[5] It is alleged in Count #2 that the accused assaulted [REDACTED] by picking him up by the shoulders off the cot while he was on his stomach and 'forcefully put them(?) down onto the bed with a clunk'.³

[6] It is alleged in Count #3 that the accused assaulted [REDACTED] by 'by coming up behind her, went to go put it (bib) on her, and she yanked back and her head went back as well'.⁴

[7] It is alleged in Count #4 that the accused assaulted [REDACTED] while he was sitting up, by 'forcefully pushing him down by the shoulders onto the cot'.⁵

[8] It is alleged in Count #5 that the accused assaulted [REDACTED] by 'forcibly picking her up by the shoulders and taking her out of the room quickly'.⁶; and by then taking her into the next room and 'pushed her down into the chair (soft foam chair) as to force her to stay there'.⁷

[9] It is alleged in Count #6 that the accused assaulted [REDACTED] by 'shoving the soother back into her mouth'.⁸

[10] It is alleged in Count #7 that the accused assaulted [REDACTED] by picking him up by the backs of the arms, facing away from her, and 'pretty roughly set him back down on the floor'.⁹

[11] The Court heard from ten (10) Crown witnesses and two (2) witnesses were called by the Defence, one being the accused testifying in her own behalf.

[12] The accused denied all of the allegations in each count.

Elements of the offence of Assault and the Onus of Proof

[13] The definition of 'Assault' is found in s. 265 CC which reads:

265. (1) A person commits an assault when

³ Transcript, March 21-22, 2011, p. 113, ll. 23-28

⁴ Transcript, March 21-22, 2011, p. 133, ll. 7-11

⁵ Transcript, March 21-22, 2011, p. 18, ll. 8-9

⁶ Transcript, March 21-22, 2011, p. 23, ll. 21-25 (Nickerson)

⁷ Transcript, March 21-22, 2011, p. 47, l. 19 (Portlock)

⁸ Transcript, March 21-22, 2011, p. 118, ll. 20-21

⁹ Transcript, March 21-22, 2011, p. 153, ll. 30-37 (Reimann)

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

[14] The onus is on the Crown to prove each of these essential elements for the accused to be found guilty:

- a. did the accused apply force, directly or indirectly;
- b. was the application of force intentional; and
- b. was the force applied without the consent of the complainant;

[15] There are some statutorily defined defences to an offence of assault. One which I find that may apply in one or more of the counts is s. 43 CC, which reads:

43. Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

Credibility, Reliability and Reasonable Doubt: *R. v. W.(D)*, [1991] 1 S.C.R. 742

[16] The issue here is credibility and reliability.

[17] In circumstances where the testimony of witnesses is different about the same event, assessing the credibility of the witnesses is important because the Court can only decide the case based on credible evidence. Guilt or innocence is not determined on which of the witnesses of the Crown or of the Defence I should or should not believe. Guilt is the result of hearing all of the evidence, determining what is credible and being satisfied beyond a reasonable doubt the Crown has proven each element of the offence, based on that credible evidence, and that no doubt exists as a result of all of the credible evidence heard.

[18] In determining Reasonable Doubt, the court must take care that the onus is not shifted to the accused.

[19] I will discuss *W.(D.)* further in my analysis.

Facts/Evidence

NOTE: I will proceed to discuss the evidence of each Crown witness in the order of the Count or Allegation, and not in order of witnesses called.

Testimony of Stacey Bramble pertaining to [REDACTED] Count #1

[20] Miss Bramble testified that she was in one of the rooms covering for one another employee and noted that a child [REDACTED] was upset at nap time and was crying. The child was refusing to lay down. Mrs. Preece was called in to assist and the witness testified that, "He was standing up and he was kind of upset, he was flailing a bit with his body, not really wanting to lay down. She tried a couple of times to lay him down in the crib and rub his back and she grabbed the child around the arms and reefed him out of the crib and she slammed him down on to the mat that was on the floor".¹⁰

[21] Ms. Bramble then testified that the child was still crying, and that Mrs. Preece was attempting to lay the child down but the child continued to try and get up. She stated that the child was attempting to get up at least 3 times or more.

[22] In further describing to the Crown how Mrs. Preece picked up the child she stated, "She leaned over into the crib with a very quick motion, grabbed him around his arms, turned to the mat which was behind her, and slammed him down on to the mat."¹¹ She stated that it made a loud noise when Mrs. Preece slammed the child on to the mat. She then later described the loud noise as a loud smack.

[23] Ms. Bramble then testified that Mrs. Preece, the accused, after putting the child on to the mat, placed a blanket over the child's head. She later indicated that some children do like to have blankets up on their face, they find it comforting.

[24] The witness indicated that she was not watching what was happening after as she was tending to another child. But she did say that she heard the accused say that the child was asleep and the accused then left the room.

[25] The witness then described her feelings, that she froze, that she turned around with the other child, she did not want to watch from then on concerning what she says the accused did to this child.

[26] When questioned, the witness indicated that from what she could see the child was okay, she did not observe any physical injuries to the child.

¹⁰ Transcript, March 21-22, 2011, p. 74, ll. 4-8

¹¹ Transcript, March 21-22, 2011, p. 75, ll. 8-9

[27] Ms. Bramble stated that she was not familiar with this child and did not have any further dealing with the child after this particular day.

[28] On cross-examination, Ms. Bramble was asked to demonstrate the force used in what she described as slamming the child on to the mat from the crib. She proceeded to do that, she stated the child would have weighed approximately 20lbs, and she demonstrated with a teddy bear, grabbing the teddy bear and quickly taking the teddy bear out of the supposed crib and then as she described, slamming the teddy bear on to the mat.

[29] She indicated that the child was screaming then and when asked in cross-examination if the child's breath was knocked out of him she stated she did not know. She could not say if the child's breath was knocked out because she did not observe or take the time to check.

[30] On cross-examination, when asked by Defence if the child's breath was knocked out of him that he wouldn't be able to scream, the witness was evasive and denied ever saying that the wind was knocked out of him.

[31] Ms. Bramble stated that she was quite disturbed by seeing this incident but in cross-examination admitted that she did not call the RCMP to file a complaint. She also did not speak with the child's mother about this incident nor did she raise this incident with Mr. or Mrs. Preece on that day.

[32] In cross-examination, Ms. Bramble did agree that the child did go to sleep and she stated that it was most likely 5-10 minutes before this happened. She then stated it could not have been shorter than 5 minutes when the child went to sleep. But later on in cross-examination she did admit that she was not certain how long after this incident she described that the child fell asleep, she could not say precisely how long after.

[33] Ms. Bramble stated that she did not check for marks on the child from the way he was supposedly placed on the mat and she did not check for any marks, bruises or injuries after the incident.

[34] She testified under cross-examination that she did not find a need to call an ambulance because she concluded the child appeared to be okay.

[35] Ms. Bramble stated in cross-examination that she did not know whether the child was facing Mrs. Preece or facing away from her when the accused picked the child up out of the crib. She also did not know if Mrs. Preece, as she earlier described, slammed him down on his face or on his back. When questioned on the fact that she was standing right next to Mrs. Preece when this happened why she could not recall if the child was facing the accused, she stated that all of this happened very quickly. Yet she did state that she was there and she saw the whole thing happen in front of her.

[36] Ms. Bramble's statement to the RCMP was put to her where it stated, and it quoted her saying, "What do I think that she's intentionally trying to hurt those children, no." And she did

confirm that that is what she told the police in her statement. She also stated that she has never witnessed any other incident by Mrs. Preece with any other child at the Daycare centre.

[37] Ms. Bramble was questioned by Defence counsel on the fact that she was going through a divorce during the time of this complaint which she admitted she was. She denied being reprimanded for speaking with the parents of the children about her divorce situation. She denied leaving her co-workers in a situation where they were out of ratio when speaking with the parents - this meaning that there were not enough workers per set number of children.

[38] It was confirmed in cross-examination that Ms. Bramble left the employment of the Daycare in June of 2009 and returned to work there in January 2010. Ms. Bramble admitted in cross-examination that she wanted the job as Director of Dragonfly.

[39] Ms. Bramble confirmed that, except for Ms. Nickerson, she was approximately 10 years older than her co-workers and that they looked to her as their leader. She admitted she was friends with all of them. Ms. Bramble was 34 years old at the time, Ms. Reimann was 24, Ms. Portlock was 23, Ms. Moore was 25, Ms. Van Keimpema was 24 and Ms. Abramic was 18. Ms. Bramble admitted these co-workers looked to her as their leader. These co-workers also looked to Ms. Bramble as the leader.

[40] Mrs. Preece was removed as Director by Provincial Licensing and Ms. Bramble was placed in that position in an acting capacity. In April of 2010 Ms. Bramble quit her employment at Dragonfly Day Care because a different person was brought in as the Director instead of appointing her.

[41] Ms. Bramble also admitted that after the accused was charged with these offences she and her co-workers were looking at buying Dragonfly Daycare Centre. Ms. Bramble was not clear in her response when asked if there were other people from the daycare she discussed purchasing the daycare with. She stated the one person she had serious discussions with was "Addy" (Ms. Adelaide Nickerson).

[42] Ms. Bramble admitted she did move forward to opening a day home with Ms. Jenna Abramic. She agreed with Defence that when these charges became public, some of the parents were pulling their children out of Dragonfly and approaching her to provide daycare. And during this time she was also considering buying Dragonfly.

Testimony of Natalie Portlock pertaining to [REDACTED]: Count #1

[43] Ms. Portlock testified that she noticed a mark on the side of [REDACTED]'s neck and upon taking a closer look noticed "... there was a bruise on the opposite side as well." She enquired with two other employees (Laura Moore and Olivia Reiman) if they had noticed anything on [REDACTED] neck and they hadn't.¹²

¹² Transcript, March 21-22, 2011, p. 53, l. 31 to p. 54, l. 5

[44] What is surprising about this allegation is that what Ms. Portlock described as 'bruises' on each side of her neck, these were gone the next day.

[45] She testified she was unable to speak with [REDACTED]'s mother about these alleged marks because the child was "wisked" out of his room, even though she had no further dealings with the child in the afternoon.

[46] Ms. Portlock testified that the only person working with her on this day was Stacey Bramble. She also stated she never saw the accused that day.

Testimony of Olivia Reimann pertaining to [REDACTED] Count #1

[47] With regards this complainant, Ms. Reimann testified that Ms. Portlock brought [REDACTED] to her to 'look' at bruises/markings on either side of his neck. She stated she could not remember what colour they were. She had not dealt with the child at all this day. Ms. Reimann stated she did not speak to anyone about her observations, including the child's mother.

[48] On cross-examination Ms. Reimann could not say for certain the date she saw the markings on the child, but was sure it was the middle of February.

[49] In direct, Ms. Reimann had stated the marks were 'on the back of [REDACTED]'s neck, one on each side'. In cross-examination she again stated the markings were on the back of his neck.

[50] Ms. Reimann confirmed that the markings she saw on the 'back' of [REDACTED]'s neck could have been caused playing with the other children.

[51] She didn't remember if she saw [REDACTED] the next day.

Testimony of Laura Moore pertaining to [REDACTED] Count #1

[52] Ms. Moore testified that Ms. Portlock had called her to her room to look at [REDACTED]'s neck. She stated she "... observed bruises on either side of his neck - -", like finger marks.¹³ She stated this was February 16th.

[53] She stated the markings looked like bruises with red marks. She could not recall how big they were.

[54] On cross-examination, Ms. Moore could not recall the next time she saw [REDACTED]. She stated the next time she did see him she could not see any bruises. She was certain the colour of the bruises were a 'greyish-purplish colour.' She did not know how these marks or bruises got there.

¹³ Transcript, March 21-22, 2011, p. 164, l. 1

[55] The other incident Ms. Moore testified to regarding [REDACTED] allegedly occurred March 9th. Ms. Moore observed the accused rubbing [REDACTED] in a rocking manner to put him to sleep. That she, the accused, was rocking [REDACTED] 'kinda' roughly but not alarming, more like an impatient rock. Ms. Moore stated she re-positioned herself while at the table to better observe the accused. She sensed the accused was getting impatient with [REDACTED] because he won't go to sleep.

[56] Ms. Moore testified that she saw the accused move her hand to the base of [REDACTED]'s head, "... like, the top of his neck, bottom of his head and as she shoved his head - - like, forced his head down into the mat ..." The accused then apparently said "... Put your head down before I snap your neck like a chicken, ...". Ms. Moore stated she took notes on a piece of construction paper of what happened including the date. She stated this was how she remembered the date.¹⁴

[57] Ms. Moore described the push to [REDACTED]'s head as "It was like a forceful slamming his head down into the - -" She could not remember if it made a noise - she was listening to the accused's words and not the sound of the mat. She observed the child "looked so scared and it broke my heart."¹⁵ After this Mrs. Preece then leaves the room.

[58] On cross-examination, Ms. Moore stated that she and Bramble, Abramic, Portlock and Reimann all worked on the same floor and were close. She confirmed that she gave two statements to the police, March 27 and April 26, 2010. She also confirmed she provided the latter statement the same day Ms. Abramic was terminated from Dragonfly Daycare.

[59] Still in cross-examination Ms. Moore stated she was only a metre away from the accused and [REDACTED] She confirmed the lights were off, but could not confirm the music was on - she stated that generally 'sleep time music' is played.¹⁶

[60] Ms. Moore stated she left the construction paper she made notes on at home. She also did not produce it to the police when she gave her statement. She stated the police did not ask for it - that she mentioned it to them. Also in her statement she stated the accused 'slammed' [REDACTED]'s head down.

[61] Ms. Moore admitted she spoke with her 'former' co-workers about this trial before giving her evidence, but not within the past couple days. She admits she "... spoken to my friends (sic) 'Olivia' and I've spoken to Jenna about we - - what we expect. That's - - I think that's it". She goes on to state that not all of them are on Facebook.¹⁷

¹⁴ Transcript, March 21-22, 2011, p. 173, ll. 24-36

¹⁵ Transcript, March 21-22, 2011, p. 175, ll. 2-21

¹⁶ Transcript, March 21-22, 2011, p. 181, ll. 16-33

¹⁷ Transcript, March 21-22, 2011, p. 183, l. 14 to p. 184, l. 3

[62] Ms. Moore confirmed [REDACTED] did not cry, or scream nor did she observe any marks or bruises on him when his head hit the mat. She also confirmed that she would have called for medical assistance if she thought [REDACTED] was injured. She did not call for medics nor did she report it to the police or Licensing that day.

[63] In cross-examination Ms. Moore testified that Ms. Bramble did not tell her her story about another incident with [REDACTED].¹⁸

Q: Before March 27th, 2010, Stacy Bramble had not told you a story about Mrs. Preece putting [REDACTED] to sleep?

A: She's never told me the story. She just told me that what she saw -- she just told me that what she saw made her uncomfortable and that she had to look away. She has never told me, to this day, what happened.

Q: Okay. By March 27th, 2010, Ms. Portlock had told you about [REDACTED] crying in the bathroom and Ms. Preece taking her out of the bathroom, right?

A: Yes.

Q: By that time you'd also discussed the bathroom incident with Ms. Nickerson, right?

A: Not that I -- oh. Yes. Yes. Yes. Sorry.

Q: Because you were relating all of these conversations --

A: Yes.

Q: -- to the RCMP --

A: Yes.

Q: -- on March 27th.

A: Sorry. It's difficult.

Q: M-hm. And by that time you'd also discussed with Olivia Reimann an incident with [REDACTED], right?

A: Yes.

Q: So I'd suggest to you that by the time you got to March 27th, 2010, you and the other women had organized your stories and built it into a case for the RCMP, didn't you?

A: No.

Q: Between January and March 2010, you discussed with your other co-workers Ms. Preece's management style, right?

¹⁸ Transcript, March 21-22, 2011, p. 185, ll. 3-38

A: Yes.

Q: And you discussed with them how she handled children, right?

A: Yes.

[64] During this same line of questioning, Ms. Moore confirmed that she quit her job at Dragonfly on April 27th, 2010. When asked that on June 4th she asked to be hired back, she stated she could not recall. She did not remember emailing Dragonfly either. She was asked again: Q: "You don't remember?", A: "No".¹⁹

[65] Defence then put a copy of her email to Dragonfly to her, she initially replied she did not remember writing that. When she was identified in the email and the addressees identified as Patricia and Kevin, she recalled the email. The Patricia mentioned was the director at the time.

[66] Quoting from the transcript:²⁰

Q: And so you've stated in the first sentence: (as read)

I'm curious to know if you've had time to think about having me return to Dragonfly as an employee as previously discussed with Patricia.

You see that there?

A: Yes.

Q: When did you have that conversation with Patricia?

A: I do remember now that after starting at the other daycare I had a bit of a mental breakdown feeling like I had abandoned the children at the other daycare who needed me and I went in after, I think it was my first or second day of work at the Canmore Daycare, and asked her if she would consider having me back because I felt -- I don't -- I was just in this weird state of mind where I felt the children needed me to come back.

Q: And you stated: (as read)

I now realize that the way I left was not the most ideal way of dealing with the situation.

You said that in your email?

A: Yes.

Q: What did you mean by that?

¹⁹ Transcript, March 21-22, 2011, p. 186, ll. 1-10

²⁰ Transcript, March 21-22, 2011, p. 186, l. 31 to p. 187, l. 24

A: I just left. I -- well, I left that day as my shift ended on the 26th and on the 27th I was so shook up by the previous days events that rather than coming in and speaking with them because I felt so intimidated. And I hadn't slept and I was feeling sick over the whole situation that I called in and asked for a personal day to rest and reflect and then after that I just -- I called -- I came in and said, I won't be returning, to Kevin in the kitchen and then I didn't come back. I just -- this meant that, like, I didn't give my two weeks as I'm supposed to ...

Testimony of [REDACTED] pertaining to [REDACTED]: Count #1

[67] Mr. [REDACTED] is the father of [REDACTED]. He testified that he is responsible for bathing [REDACTED] every second day and during these times never noticed any markings on his son. He stated he would have noticed if there were bruises on him.

Testimony of Danielle Van Keimpena pertaining to [REDACTED]: Count #2

[68] The Crown concedes that it has failed to prove an essential element of the charge of assault namely, the identity of the complainant. Ms. Van Keimpena could not positively identify who the complainant was in this allegation of assault.

[69] I find the accused not guilty on Count #2.

Testimony of Jenna Lee Abramic pertaining to [REDACTED]: Count #3

[70] The Crown will not be seeking a conviction upon its review of the evidence.

[71] I find the accused not guilty on Count #3.

Testimony of Adelaide Nickerson pertaining to [REDACTED]: Count #4

[72] Ms. Nickerson testified that [REDACTED] was sitting on his cot not wanting to go to sleep during nap time. That [REDACTED] was being 'disruptive' to the other kids by sitting up. Ms. Nickerson alleges that the accused came in and "... pushes him down onto the mat or onto the cot, sorry and puts a blanket over him, over his chest and his body, and then holds him down".²¹

[73] By pushing, the witness testified that "She (accused) had his shoulders and just pushed him down in a forceful manner. She didn't ask him to lie down. It was just pushing down". She stated the accused's actions (pushing) was 'inappropriate pushing'.²²

²¹ Transcript, March 21-22, 2011, p. 18, ll. 2-4

²² Transcript, March 21-22, 2011, p. 18, ll. 8-12

[74] Ms. Nickerson stated the child hit the "pillow" on the cot. The accused had held him down by holding her hands on his chest to keep him from getting up. The child calmed down after "maybe five minutes, six minutes, until he stopped fighting it".²³ The witness then could not remember if [REDACTED] fell asleep, she didn't think he fell asleep.

[75] Ms. Nickerson stated that the accused pushed [REDACTED] down onto his 'pillow'. In cross-examination her statement given to the RCMP from April 21, 2010 was put to her where she stated that she was 'not sure' if [REDACTED] had a pillow.

[76] Further, Ms. Nickerson testified that [REDACTED] when "... pushed he was quite upset and crying".²⁴ In cross-examination and when again she was put to her statement to the police she stated she could not remember whether [REDACTED] cried or not. It is to be noted that the witness' statement to the police was made April 21, 2010, approximately two to two and a half months after the alleged assault on [REDACTED] that she alleges occurred "between January and early February", 2010.²⁵ When asked why she now in her testimony was certain about the 'pillow' and [REDACTED] 'crying' in contradiction to her statement to the police, she was vague: she stated to the police that she didn't remember; that she was nervous at the time; and that "it was quick, I didn't know what was going on; and I might not have remembered at the time".²⁶

[77] Ms. Nickerson testified there were no marks or bruises on [REDACTED] after this alleged incident.

[78] She further testified in cross-examination that she gave her statement to the police the day after Stacey Bramble quit her job at Dragonfly Daycare.

[79] Mrs. Preece testified and denied she would ever push [REDACTED] or any child for that matter in the way described by Ms. Nickerson. She stated [REDACTED] was a part-time child; he was quite young; he had a hard time adjusting to day care; they spent a lot of time with him in the office; that he had a hard time sleeping at times and that he had a soother. Mrs. Preece stated that in putting [REDACTED] to sleep she would do nothing different from how she would put any child to sleep and that is to rock his back and cover him with a blanket and offer him his soother at nap time.

[80] Mrs. Preece testified that [REDACTED] was a shy child and would never do anything to bring attention to himself, such as sitting up during nap time and have other children copy him.

[81] With regards the specific allegation of pushing [REDACTED] down forcefully, Mrs. Preece testified that "I would never have had to do such a thing to any child, let alone [REDACTED]" She would

²³ Transcript, March 21-22, 2011, p. 20, ll. 29-33

²⁴ Transcript, March 21-22, 2011, p. 20, l. 26

²⁵ Transcript, March 21-22, 2011, p. 15, ll. 35-38

²⁶ Transcript, March 21-22, 2011, p. 39, ll. 1-26

indicate to [REDACTED] it was time for a nap and would have laid him down and place a blanket over him. He would have stayed this way while rocking his back.²⁷

[82] Mrs. Preece denied ever having to do "such a thing to .. [REDACTED]"

[83] I do not find Ms. Nickerson's testimony reliable.

Testimony of [REDACTED] pertaining to [REDACTED]: Count #4

[84] [REDACTED] is the father of [REDACTED]. He was the eighth witness for the Crown. He was asked to describe if he noticed any behavioural changes he may have observed of his son around the time of these alleged charges. [REDACTED] stated "there were a number of behaviours that we were concerned about...".²⁸ He mentioned two in particular.

[85] First, he noticed that one day [REDACTED] became hysterical when he tried to change his diaper on a change table at home. Another occasion of diaper changing where this hysteria "manifested itself" was in the locker room at the pool. He stated [REDACTED] never reacted in this manner before.

[86] The second behavioural change [REDACTED] stated he noticed was verbal - that [REDACTED] would yell "No" very loudly.

[87] The defence had objected to the relevance of the testimony of this witness. The Court allowed the questions by the Crown to continue, but it was made clear that this Court would determine the weight to be given to this evidence.

[88] I agree with the Defence objections that the evidence produced by this witness has no relevance to the charge the accused is facing in this particular count. There is no allegation of any incident relating to a 'change table'. There is no allegation of any incident relating to the 'verbal' reactions of [REDACTED]

[89] I am giving no weight to this testimony. I did not see the relevance of [REDACTED]'s testimony.

Testimony of Adelaide Nickerson pertaining to K.M.: Count #5

[90] Ms. Nickerson testified that she took two children into the bathroom to change diapers. Both were quite upset. One was [REDACTED]. She was upset and crying because Ms. Nickerson wouldn't allow her to take her blanket to the bathroom. [REDACTED]'s blanket was her security blanket.

[91] The witness testified that she was changing [REDACTED]'s diaper "... and everything just went so quickly. I just saw Sue (Mrs. Preece) come in, in a rush, and very frustrated look on her face,

²⁷ Transcript, March 26, 2011, p. 7, ll. 26-30

²⁸ Transcript, March 21-22, 2011, p. 189, ll. 19-34

and she forcibly took [REDACTED], picked her up and took her out of the room quickly". "She picked her up by the shoulders. It wasn't a gentle under the arms that you normally pick up a child."²⁹ She went further to describe the child was picked up like a "jolt" and Mrs. Preece "brought her towards her and took her out of the room."³⁰

[92] Ms. Nickerson then stated that the accused then took the child out of the room.

[93] In cross-examination, Ms. Nickerson agreed with Defence that it was her decision to separate [REDACTED] from her blanket; that she knew [REDACTED] would get upset if she didn't have her blanket, but she chose to separate her from her blanket by taking her to the bathroom without it.

[94] Ms. Nickerson also agreed with Defence that she had two children crying in the bathroom when she was changing their diapers - both had separation issues: one, from her parents, and the other from her blanket. Ms. Nickerson agreed that she made [REDACTED] upset by making her leave her blanket behind.

[95] Ms. Nickerson testified in cross-examination that she checked for bruises or marks on [REDACTED]'s arms and saw none.

[96] Ms. Nickerson could not recall if [REDACTED] had her blanket when she saw her sitting in her chair.

[97] Mrs. Preece testified that when she entered the bathroom [REDACTED] was "very upset, screaming, crying."³¹ She was standing beside the other child [REDACTED] who was being diapered. Mrs. Preece was positive she picked [REDACTED] up under her arms, her armpits, placed her on her hip and left the room.

[98] She stated that she assured her that she would find her blanket for her. [REDACTED] was very fond of her blanket and after she placed her in the chair Mrs. Preece found her blanket, gave it to her and she stopped crying.

Testimony of Natalie Portlock pertaining to K.M.: Count #5

[99] Ms. Portlock testified that she was in the 'Frog Room' when she saw Mrs. Preece come into the room "... holding [REDACTED] by her upper arms and away from her body ... And she proceeded to take [REDACTED] to a soft -- it was a soft foam chair."³²

²⁹ Transcript, March 21-22, 2011, p. 23, ll. 21-29

³⁰ Transcript, March 21-22, 2011, p. 26, ll. 8-10

³¹ Transcript, March 26, 2011, p. 8, ll. 15-16

³² Transcript, March 21-22, 2011, p. 47, ll. 3-7

[100] She then stated that Mrs. Preece "... pushed her down into the chair as to force her to stay there. And then as she walked past me, she said: (as read) 'This child's lucky I let her live'." ³³

[101] Mrs. Preece, in her testimony, denied ever saying what Ms. Portlock alleges. She stated that if she ever made such a statement it would have been "- - you would think she wasn't going to live because she was so upset and was common knowledge ... how she felt about that blanket." The child went everywhere with the blanket. The parents had also bought a duplicate blanket for when the blanket was in the wash. ³⁴

[102] Ms. Portlock described Mrs. Preece carrying the child by her shoulders and away from her body. She stated that the accused was moving fast - as if storming into the room and that the child was crying. She did not remember if the child's back was facing the accused or her face.

[103] Ms. Portlock testified that she gave [REDACTED] her blanket, that she was trying to comfort her. She then asked Mrs. Preece what [REDACTED] did to make her angry. The accused's reply to her was 'Did you not hear her screaming for her blanket?'

[104] In cross-examination, Ms. Portlock confirmed that the accused did not drop [REDACTED] into her chair; she did not yell at [REDACTED] or call her names; she did not strike [REDACTED]; and there were no marks or bruises on [REDACTED]

[105] Mrs. Preece, in her testimony stated that she never pushed [REDACTED] into her chair. [REDACTED] was tall for her age and once placed in the chair her knees would come up (this is a small children's or Disney chair made of sponge) and it would appear that she was forcefully being placed in it. She denied forcibly placing the child in the chair.

[106] Mrs. Preece stated that it was staff she was frustrated with and not the child - that staff would allow a child to scream over a blanket when the simple solution was to allow her to take it everywhere she went.

[107] Mrs. Preece expressed her frustration with staff when they ignored the children, when they did not tend to their needs, did not feed them when they were looking for more to eat, and especially when staff did not interrupt their own lunch breaks to tend to the children.

Findings

[108] My conclusions about Ms. Nickerson remain the same as in the [REDACTED] matter. I do not find her to be a credible witness and I do not find her evidence reliable. I believe she also exaggerated her version of the alleged events.

³³ Transcript, March 21-22, 2011, p. 47, ll. 19-22

³⁴ Transcript, March 26, 2011, p. 9, ll. 22-29

[109] A child was picked up off the floor by the accused because Ms. Nickerson was not tending to the child's needs - and that is, bring her blanket to her. Ms. Nickerson was the cause of [REDACTED]'s screaming and crying.

[110] With regards Ms. Portlock, I do not find her testimony reliable. What she described how Mrs. Preece was to have sat [REDACTED] down on her chair is not something I would consider as meeting the standard of what would be an assault on the child. The elements of an assault are not proven.

[111] Mrs. Preece carried the child, and as Defence argues, which I agree with, there is no "lawful" or "legal" way of carrying a child, unless it is in an absurdly extreme fashion.

Testimony of Danielle Van Keimpema pertaining to H.A.: Count #6

[112] The Crown is not seeking a conviction regarding [REDACTED] alleging she was assaulted by the accused.

[113] I find the accused not guilty on Count #6.

Testimony of Olivia Reimann pertaining to [REDACTED]: Count # 7

[114] Ms. Reimann testified that [REDACTED], who was over two years old at the time, had taken a toy from another child and Mrs. Preece came over and picked him up off the floor by the backs of the arms and brought him close to her face and said something to him. She couldn't remember exactly what she said to him, but something along the lines of not taking toys away from the other children. [REDACTED] then started to cry. Ms. Reimann stated the accused picked up [REDACTED] 'by the backs of his arms' with the child facing away from Mrs. Preece. She stated the accused then put him down 'roughly' but [REDACTED] did not fall over.

[115] Ms. Reismann testified that she could not recall if [REDACTED] was standing or sitting when Mrs. Preece picked him up. She also did not observe any injuries on the child.

[116] She testified that the accused's tone was angry when she spoke to [REDACTED]. She stated she could tell by Mrs. Preece's face that she was 'quite' angry; that she was 'clenching her teeth' when she spoke to him.³⁵

[117] On cross-examination, Ms. Reimann confirmed that [REDACTED] took a toy from a child, she could not remember if it was from a boy or girl.

[118] She further testified as follows:³⁶

³⁵ Transcript, March 21-22, 2011, p. 154, ll. 20-23

³⁶ Transcript, March 21-22, 2011, p. 159, ll. 1-30

Q: So you could see his face and you could see her face?

A: Oh, sorry. Well, no. He was facing away from – so he was sitting on the floor like this, the other child was here, and then Sue came – I'm – I can't remember for sure, but came in from behind him and grabbed him like this.

Q: Okay. But I guess my question is, where were you in relation to Mrs. Preece when this happened, when she came in?

A: I can't remember.

Q: So you could've been behind her as well?

A: Could've been.

Q: Okay. And so she picked [REDACTED] up, she said something in his ear and she put him back down?

A: Yes.

Q: Her hands never left his body?

A: No.

Q: Okay, So she didn't drop him?

A: No.

Q: And you said he didn't fall over?

A: No.

Q: So Mrs. Preece was taking corrective action because he had taken the toy from another child; right?

A: Yes. But corrective action in our profession is not picking a child up in anger and bringing him right close to your face and saying something like that in his ear and then putting him back down.

[119] Ms. Reimann could not recall what [REDACTED] was wearing, but stated he usually wore T-shirts. She does not remember checking him over for bruises nor did she remember if [REDACTED] was sitting or standing. She did not remember if Mrs. Preece was also comforting the other child.

[120] She never reported this incident to the police or to Licensing.

Findings

[121] Ms. Reiman could not confirm if [REDACTED] was standing or sitting when the accused picked him up.

[122] She was wavering in cross-examination whether she was facing both [REDACTED] and Mrs. Preece when the accused had picked him up. She could not remember where she was when the accused picked up [REDACTED] and agreed that she could have been behind Mrs. Preece.

[123] Mrs. Preece testified that [REDACTED] and [REDACTED] came to the daycare early and spent a lot of time with them and they spent a lot of time together as well. It was [REDACTED] whose toy [REDACTED] took.

[124] She testified that she was on her knees with them and picked [REDACTED] up and told him to be nice to the other children. She then puts him on the other side of her and consoles [REDACTED] was still being held by Mrs. Preece. She stated she picked up [REDACTED] under the armpits. She denied grabbing him roughly.

[125] I believe Mrs. Preece picked up [REDACTED] for purposes of correcting him. I don't think Ms. Reimann is exactly sure of what happened here. I have doubts that the witness, Ms. Reimann understood the accused's actions as inappropriate.

[126] Ms. Reimann agreed that Mrs. Preece was taking corrective action. And I believe that s. 43 CC applies in this case. Mrs. Preece was acting in the capacity of a parent taking corrective action. [REDACTED] clearly made the other child cry for taking a toy away.

[127] I believe the accused that she was kneeling when she picked up [REDACTED]

[128] I find that Mrs. Preece was taking corrective action with [REDACTED]

Defence Submissions

[129] The Defence submits that the accused should be found not guilty on all counts. It argues that the Crown has failed to establish that the actions of the accused as alleged meet the standard of an assault in some of the counts and in others, it has failed to prove the charge of assault beyond a reasonable doubt.

[130] The Defence argues that the testimony of the Crown witnesses, particularly the employees of Dragonfly is unreliable and the witnesses are not credible.

[131] The Defence argues that s.43 CC should be considered as part of the accused's defence and the motive is a factor to be considered also.

[132] The Defence submits that the accused should be found not guilty on all counts.

[133] The Defence filed written arguments and authorities.

Crown Submissions

[134] The Crown conceded on count #2 as the essential element of identity could not be established and would not be seeking a conviction to counts #3 and #6.

[135] The Crown argues that the testimony of the Crown witnesses should be accepted as credible and reliable.

[136] The Crown filed written submissions and authorities.

Analysis

Credibility, Reliability and Reasonable Doubt

[137] Credibility of the witnesses and the accused and Reliability of their respective testimonies is an issue that is to be determined. In particular, in such instances where the testimony of the accused is different from that of the complainant, it is not for the Court to determine who is to be believed or disbelieved but rather, the Court's task to weigh the evidence and determine whether the Crown has proven its case beyond a reasonable doubt. Care must be taken that the onus on the Crown is not inadvertently shifted to the accused.

[138] The test in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, is the prevailing law in determining credibility and reasonable doubt (*W.(D.)*). The test has been restated by some courts, particularly by the British Columbia Court of Appeal: *R. v. H.(C.W.)* (1991), 68 C.C.C. 146 (B.C.C.A) where a fourth test was added; *R. v. Ay* (1994), 93 C.C.C. (3d) (B.C.C.A). The four instructions are as follows at pp 476-477:

1. If they believe the accused they must acquit;
2. If they do not know whether to believe the accused or the complainant, they must acquit;
3. If they do not reject the evidence of the accused they will have a reasonable doubt and must acquit;
4. If they disbelieve the accused, that is if they reject his evidence as untrue, they have to be convinced beyond a reasonable doubt of the guilt of the accused on the whole of the evidence they could convict.

[139] The B.C.C.A in *R. v. Ay* stated the fourth instruction as follows: 'If you disbelieved the accused, and on the credible evidence that you believe, the Crown has proved each element of the offence beyond a reasonable doubt, you must convict.'

[140] The Supreme Court of Canada in *R. v. C.Y.L.* (2008), S.C.J. No. 2, and the Alberta Court of Appeal in *R. v. Currie*, 2008 ABCA 374, restated the analysis of reasonable doubt, as it applies to credibility emphasising that the evidence of the accused should be reviewed first to determine if reasonable doubts exists after reviewing/analysing the accused's credibility.

[141] The case of *R. v. Abdirashid*, 2012 ABPC 22, His Honour Judge Bascom reviewed the decisions of His Honour Judge Seminuk in *R. v. Snow*, 2006 ABPC 92 and that of His Honour Judge Anderson in *R. v. McKay*, 2011 ABPC 82, where both provided an analysis on the issue of credibility and the assessing of same - that this occurs by first reviewing the accused's testimony.

[142] There are many factors a trial Judge must look at to assess truthfulness and credibility. One must look at whether the accused's evidence was not improbable or unrealistic; that there was no contradiction in them; that credibility of the accused has not be attacked by evidence against his character; that nothing appears by his testimony that discredits the accused; that there is nothing in his demeanor while in court and on the stand that would suggest untruthfulness (*R.v. Snow*).

[143] In *R. v. McKay*, Judge Anderson also discussed the aspect of reliability and truthfulness of a person's evidence. A Judge has to consider those factors that lead to impressions of possibility or probability of testimony, body language, contradictions, responsiveness to questions, reasonableness of responses, and so on - but demeanor is not the sole indicator of credibility.

[144] At paragraph 9 of His Honour Judge Bascom's decision (*Abdirashid*) he goes further and quotes *R. v. McKay*, in paragraph 9:

...

[14] Assessing the truthfulness and reliability of what a person says is a human process that everyone does in day to day life. It is not a function unique to trial judges although it is one of a trial judge's core functions. In assessing credibility, a trial judge must rely upon personal human experience but also judicial experience. For example, a judge can and will consider a person's demeanour in assessing credibility as anyone would. That can include the person's body language, inflections, confidence level, responsiveness, apparent reasonableness, and many other traits, some subtle, some not. On the other hand, a trial judge will know from judicial experience, that demeanour alone is a very poor indicator of reliability or truthfulness. Skilled liars can present very well.

[15] A more important questions is whether the witness's testimony hangs together. How plausible is it? That is not to say how normal is it but rather, is it logically connected to its context? How consistent is it with other evidence both from the witness and from other sources? If there are discrepancies or inconsistencies, are those consistent with honest mistakes through the frailty of human memory for example, or do they reflect a seemingly deliberate distortion? Does the witness have a motive to fabricate or distort the evidence? If two or more witnesses are testifying, is there evidence of collusion?

[16] A Court must have regard to what have been described as 'testimonial factors' which entails looking at testimony on at least

three different levels. This includes an assessment firstly of the witness's opportunity or ability to actually perceive what the witness claims to have perceived and is now being recalled and recounted on the witness stand. A second factor is the witness's apparent ability to recall what was actually witnessed. The third factor is the witness's ability to recount. Different people have different abilities in each of these areas, which a Court must recognize. These factors are particularly important when assessing the reliability of the witness, as distinct from the honesty of the witness. They are also particularly relevant in attempting to determine whether inconsistencies are compatible or irreconcilable.

[17] In assessing the honesty of a witness, a different set of testimonial factors come into play, which have little to do with the witness's ability to perceive, recall and recount. They include factors such as bias, motivation to lie or any other factors that might lead a witness to deliberately distort the truth.

[145] Also in *R. v. S.I.C*, 2011 ABPC 261, Judge J. N. LeGrandeur, in discussing credibility stated:

[19] Determining credibility is an issue of fact, and it is a task that cannot be fulfilled by following any specific set of rules. Every witness, regardless of occupation, gender, nationality, age or other characteristics, is at the commencement of his or her evidence, presumed to be telling the truth. No one is entitled to greater credibility because of who or what they are. There is no hierarchy of witness credibility. It is only after the individual's evidence has been tested and assessed that a finding of credibility can be made, if at all. The presumption of credibility, in the context of both truthfulness and reliability, is a fragile presumption. It may be displaced by the witness's own testimony; the inconsistency of the witness's testimony from an internal perspective; or with respect to the facts that are not in dispute. One cannot however, sweep away the presumed credibility of a witness without reason.

Testimony of the Accused

[146] The accused testified in her own defence. She denied all of the allegations and more specifically the following:

Count #1: Mrs. Preece denied forcing [REDACTED] down on the mat, that it never happened. She stated that kids do lift up their heads and as it gets heavier they flop it down. The accused proceeded to demonstrate how she would have laid the child down on the mat.

She stated that the demonstration by Ms. Bramble of how the accused allegedly 'slammed' the child down on the mat was an exaggeration.

Counts #2 and #3: The accused denied the allegations, even though the Crown had submitted that it was not asking for convictions.

Count #4: Mrs. Preece denied the allegation she shoved [REDACTED] onto the mat with force as alleged. She stated she had a close relationship with [REDACTED] and spent a lot of time with him. Because he was part-time, [REDACTED] was having a harder time adjusting to daycare.

Count #5: Mrs. Preece testified that [REDACTED] was a very happy child provided she had her blanket. And if she had her blanket, she was good to go anywhere. She denied picking [REDACTED] in a rough and quick manner. She stated she picked her up in the bathroom because she was very upset. She placed her in the Disney chair and fetched her blanket. She quickly settled down after this. She denied pushing the child into the Disney chair.

Count #6: The accused denied any allegation of assault on [REDACTED] by 'shoving' her soother into her mouth, even though the Crown was not seeking a conviction.

Count #7: The accused denied the allegation of committing an assault on [REDACTED] by allegedly picking her up in a quick manner on the arms, bringing her to her face and saying something to him in his ear. She stated that [REDACTED] had taken a toy from another child, [REDACTED] causing her to cry. She stated she knelt down beside [REDACTED] picked him up and told him he shouldn't take toys from other kids, then place him down again. She denied putting the child down 'roughly'.

[147] Following on my review of the cases referred to in my discussion on Credibility and Reliability relative to the testimony of the accused, I find Mrs. Preece to be a credible witness and her testimony reliable.

Findings re: Testimony of the Crown Witnesses that were Employees

[148] **Ms. Bramble:** I find her testimony unreliable. I do not find her to be a credible witness.

[149] I find Ms. Bramble exaggerated the description of the allegations she made regarding [REDACTED]. In my view, she at times was argumentative, sarcastic and tried justifying her answers by adding her own commentaries during cross-examination.

[150] I find Ms. Bramble clearly had a motive when she filed these charges and that was first, to become the director and second, when this failed to occur to take over or purchase Dragonfly.

[151] I find the testimony of Ms. Bramble regarding the allegation Mrs. Preece grabbed [REDACTED] by his arms as being exaggerated.

[152] **Ms. Moore:** I took the time to quote from the transcript to point out my conclusion that the testimony of this young lady is unreliable.

[153] Frankly, I do not believe her and do not find her to be a credible witness. She remembers clearly certain things going towards the allegations against Mrs. Preece, but cannot produce her notes she supposedly made on construction paper to support her allegations, she could not recall contacting Dragonfly until the email was put to her, then she provides what I call an incredible explanation of why she was wanting to go back to Dragonfly.

[154] I am also suspicious how she uses the word 'slam' in her statement to the police similar to Ms. Bramble's statement. She also confirms having discussed these allegations with the other co-workers - but 'not in the past couple days since the trial started.'

[155] Surely, this cannot be seen as anything but confirmation of collusion in the works among these former employees.

[156] With regards to the evidence put forth with respect to alleged bruises on [REDACTED]'s neck. I am certain that bruises do not disappear within 12 or 24 hours. Three witnesses, Mss. Portlock, Reimann and Moore, all testified they noticed bruises on [REDACTED]'s neck on each side. Both Mss. Portlock and Reimann testified they did not see any bruising the next day. I have already found Ms. Moore not being a credible witness and I am not convinced she saw bruising.

[157] I find it difficult to believe there were bruising on [REDACTED]'s neck. If anything, he may have had red marks on his neck. There was confirmation from the witnesses that these marks could have been the result of [REDACTED] playing with the other children. There was no evidence to suggest Mrs. Preece caused these marks.

[158] I find [REDACTED]'s testimony only goes to my finding that I question whether in fact there was bruising on [REDACTED]'s neck.

[159] **Ms. Adelaide Nickerson re [REDACTED]:** I have two conclusions in regards to the evidence of Ms. Nickerson and the allegation of assault: First, I do not believe the witness was totally forthright during her testimony and in cross-examination nor in her statement to the police. Second, I agree with Defence that this witness exaggerated her understanding of the events she alleges occurred.

[160] I do not find her testimony to be reliable nor do I find her credible. I do not believe her evidence relative to the allegation of assault.

[161] Regarding her testimony about [REDACTED]: I have already found that she was not credible and her testimony unreliable. I do not believe her in her allegation that [REDACTED] was assaulted by the accused by picking her up by the shoulders.

[162] **Ms. Natalie Portlock:** I do not find her testimony reliable. What she described how Mrs. Preece was to have sat [REDACTED] down on her chair is not something I would consider as meeting the standard of what would be an assault on the child.

Findings and Conclusions

[163] I find that there clearly was a motive behind the actions of the Crown witnesses, namely Mss. Bramble, Nickerson, , Portlock, Abramic, Reimann, Moore and Van Keimpena. I believe the motive, lead by Ms. Bramble, was: if Mrs. Preece was removed as Director, and owner, these individuals would assume operation, and maybe ownership, of Dragonfly Daycare. Ms. Bramble admitted that she wanted the directorship job of Dragonfly. All were friends and all had an issue with Mrs. Preece.

[164] Ms. Bramble, aside from Ms. Nickerson, is relatively older than the other employee witnesses. Evidence came to light that Ms. Bramble was looked to as a leader by all and all were friends that wanted Ms. Bramble as the director. I believe Ms. Bramble was determined that if she could not be the director or to take over Dragonfly she would see it go down.

[165] Ms. Moore admitted that they (employees) met and talked about these charges against Mrs. Preece up to at least a 'couple of days' before the trial. She provided two statements to the RCMP. Her second statement was provided on the day Ms. Abramic was fired and they attended to the detachment together.

[166] I find Ms. Bramble to be the "ring leader" of these employees and convinced them they all collude to bring these charges against Mrs. Preece. I could not find any sustainable truth to Ms. Bramble's testimony and found her a person determined to see her efforts at destroying Mrs. Preece at any expense come to fruition. Her efforts at wanting to appear credible was a failure. I did not find her credible.

[167] It is unfortunate that this witness, Ms. Bramble, managed to also convince some of the parents of these children that Mrs. Preece had done these horrible deeds that she found such that she 'could not look' to see what was happening - yet she could describe what happened.

[168] In Merriam-Webster's Dictionary, *Motive* is defined: "*something (as a need or desire) that causes a person to act*".

[169] Motive can be described then as a purpose, grounds or reason for doing something. Common sense tells me that evidence of motive can be relevant to the question of credibility and reliability.

[170] I believe these individuals colluded to bring forth these allegations with the objective that Mrs. Preece would be held criminally responsible for the allegations.

[171] I find the conduct of these individuals (the former employees) to be vindictive, abhorrent and egregious. Their conduct is shameful.

[172] They set out to destroy Mrs. Preece and in so doing destroyed her business, her reputation and her right to a life free of this type of harassment.

[173] I also find the conduct of these former employees as immature and ignorant while in the gallery and especially while Mrs. Preece was on the stand.

[174] I also find it unfortunate that these employees, especially Ms. Bramble and Ms. Nickerson, the two older staff members, managed to convince the parents of the children alleged to have been assaulted to take a stand against Mrs. Preece by removing their children from the daycare or participating in the prosecution of the accused. However, the parents are not necessarily to blame. A natural reaction of any parent being told their child was assaulted or under threat of an assault would be to protect their child from any type of harm or threat of harm. I am not laying blame on the parents.

Decision

[175] **Count #1:** I find the Crown has failed to prove an allegation of assault by Mrs. Preece as against [REDACTED] beyond a reasonable doubt.

[176] I find the accused not guilty on Count #1.

[177] **Count #2:** The Crown conceded it failed to prove identity of the alleged victim [REDACTED]. I find the accused not guilty on Count #2.

[178] **Count #3:** Crown is not seeking a conviction on this count. I find the accused not guilty on Count #3.

[179] **Count #4:** I find the Crown has not proven its case against the accused in its allegation of an assault on [REDACTED] beyond a reasonable doubt.

[180] I find the accused not guilty on Count #4.

[181] **Count #5:** The Crown has not proven beyond a reasonable doubt that the accused assaulted [REDACTED].

[182] I find the accused not guilty on Count #5.

[183] **Count #6:** The Crown is not seeking a conviction regarding an alleged assault on [REDACTED].

[184] I find the accused not guilty on Count #6.

[185] **Count #7:** I find that Mrs. Preece did not assault the child, [REDACTED], but was taking corrective action.

[186] On this basis, I find the accused not guilty of assault on Count #7.

[187] All charges against the accused are dismissed.

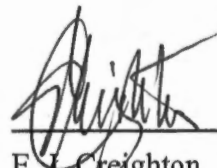
Heard on the following dates:

21st day of March, 2011

22nd day of March, 2011

26th day of March, 2011

Dated at the Town of Canmore, Alberta this 3rd day of April, 2013.

 8.C.J.
E. J. Creighton
A Judge of the Provincial Court of Alberta

Appearances:

D. Simpson
for the Crown

D. Fedorchuk
for the Accused